

Fitness to Practise Committee – 25 February 2010

Fitness to practise process and length of time

Executive summary and recommendations

At its meeting in October 2009, the committee suggested it would be helpful for it to have more information on the length of time cases take, the stages that are gone through and where delay might occur. The attached paper sets out the process for investigating cases and the listing of hearings, and highlights the timeframes involved.

Decision

This paper is to note. No decision is required.

Background information

The Fitness to Practise Department provides the Committee and Council with data on the length of time cases take to conclude.

A number of practice notes exist which provide further detail on the various stages of the process.

Resource implications

The annual budget and resources required are calculated based on the way in which the case management and hearings processes are currently operated. Any changes to the current process would be likely to have an impact on the resources available and budget.

Financial implications

As above

Appendices

Fitness to practise process and length of time report

Date of paper

12 February 2010

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Fitness to practise process and length of time

1.0 Introduction

- 1.1 This paper provides further information on the management of fitness to practise cases and why some cases vary in length of time to conclude.

The Investigating Process

2.0 Receipt of a case

- 2.1 When a case is received it is assessed by a Lead Case Manager, logged by the Administration Team and assigned to a Case Manager. The Case Manager then investigates the matter. In order for a case to proceed as a fitness to practise allegation, the standard of acceptance for allegations must be met. This was approved by the Council in December 2006 and states that an allegation must set out the events and circumstances giving rise to the allegation in sufficient detail for that registrant to be able to understand and respond to that allegation.
- 2.2 Where the standard of acceptance isn't met or further clarity is required, the Case manager will seek to obtain further information. The amount of investigation required varies from one letter to the complainant to confirm that there is no further information is available, to numerous exchanges with a number of parties. The type of information that is frequently requested includes:
- medical records;
 - management statement of case if a employer investigation has taken place;
 - copies of correspondence;
 - a conviction certificate.
- 2.3 The most requests for information in a single case considered at Investigating Committee Panel (ICP) so far this financial year was 14.
- 2.4 Where further information is requested, the Case Manager will write to the appropriate person or organisation and await a response. In many cases the information is provided promptly and the Case Manager will review the information when it is received and assess what further investigation, if any, is required.

3.0 Case review

- 3.1 There is a clear process in place for the review of cases. This ensures that where information has been requested and not received, the case is

reviewed information chased. The following measures are in place to review cases:

- All cases are reviewed by the Case Manager at least once a month. This review will prompt a chase letter if information is outstanding.
- A list of cases which have reached one month without action is produced every Monday for Lead Case Managers to review and action with their team.
- Case meetings take place once a month between the Lead Case Manager and each of the Case Managers in their team. This is more frequent for newer members. At these meetings the list of cases awaiting consideration by an ICP are discussed and the progress of the case and any action required is recorded.
- Where there is an ongoing employer process or criminal investigation, the Case Manager may be aware that no further updates will be available for a certain length of time and will record this on the file. The Case Manager will generally await the outcome of the employer investigation in order to allow the employer to complete their process. The Case Manager will also await the outcome of any criminal case before proceeding with the fitness to practise allegation in order not to prejudice a criminal investigation. This is in accordance with the Concurrent Court Proceedings practice note which was approved by the Council in October 2009.

3.2 In some cases, where a response is not forthcoming a request for the information will be made under Article 25(1) of the Health Professions Order 2001, (the Order) which requires information to be disclosed for the purposes of a fitness to practise investigation.

4.0 Registrant observations

Once all the relevant information has been gathered the allegation is drafted by the Case Manager and sent to the registrant. The Order provides that the Registrant must be provided with 28 days to provide their observations. An extension of time can be requested by the registrant and one 28 day extension can be granted administratively by the Case Manager. Further requests must be considered by the panel. A request for an extension is made in about a quarter of cases. This can therefore add four weeks to the length of time a case takes to reach an ICP.

4.1 If a response is received from the registrant, the Case Manager will assess the information to determine whether any clarification is required from the complainant or whether further information should be sought. If so, the steps outlined above will be repeated. Further information or clarification will be sought from the complainant or another party. This can include seeking expert or clinical advice. The case will then be reviewed and the allegation re-drafted if necessary. The Registrant is then notified of the revised allegation and additional material and provided with 28 days to respond to the allegation. A further extension of 28 days can be requested by the Registrant.

5.0 Preparation for ICP

5.1 When a case has been through the stages above, it is assigned to an ICP date for that profession. The professions about which we receive the most allegations have two ICP dates per month, and the smaller professions have one ICP date per month. We currently hold six days of ICP's per month.

5.2 A case cannot generally be assigned to a date less than three weeks in advance due to the administrative work that needs to be undertaken. The Administration Team go through the following process:

- bundles are produced by the Case Manager and passed to the Administration Team three weeks prior to the panel date;
- the Administration Team collate all the cases for the ICP day and send to an external company for copying;
- the Administration Team send the information to the panel two weeks prior to the meeting;
- any further information is sent to the panel one week before the panel date.

5.3 The bundle is sent to the panel two weeks in advance of the meeting in order to provide them with sufficient time to read the information. Panels consider up to 15 cases per meeting, as well as health and character declaration cases. It is therefore important that the information is received in advance and the panel is well prepared.

5.4 If a case misses the deadline for an ICP by only a couple of days, it can add 4-6 weeks to the length of the case depending on when the next panel is scheduled to take place.

6.0 Following an ICP

6.1 The ICP have the option of requesting further information if they consider that more detail is required before making their decision. Case Managers endeavour to obtain all relevant material during their investigation and this has only occurred in 7 cases out of 371 considered between April and December 2009.

7.0 Length of time statistics – Investigation process

7.1 Of the cases considered at ICP stage, panels make a no case to answer decision in approximately 40 per cent of cases and they are therefore closed at this stage. So far in this financial year (April to December 2009), cases have taken a median of four months, mean of six months, to reach an ICP. This is a reduction of one month from 2008-09.

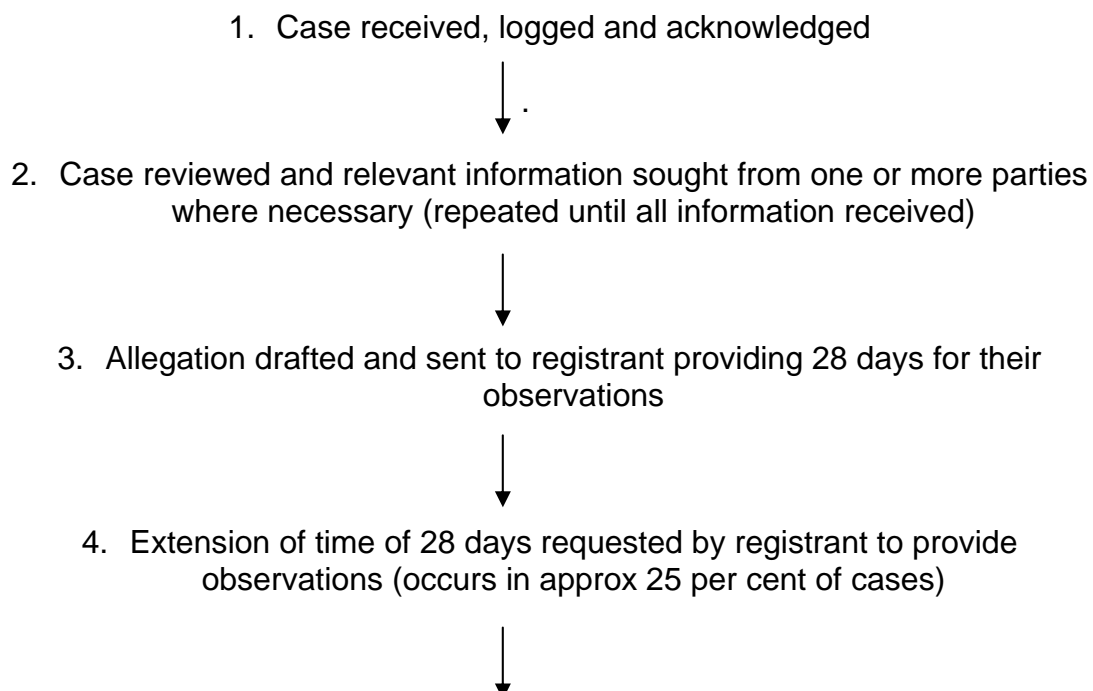
Months from the date an allegation is made to ICP

Number of Months	Cases 2008-9	Cases 2009-10 YTD
1-4	133	171
5-8	138	105
9-12	57	32
13-16	15	13
17-20	8	9
21-24	5	1
25-28	2	1
29-32	1	1
33-36	3	1
Over 36	1	1
Mean Months	7	6
Median Months	5	4
Total Cases	363	335

7.2 The types of cases that take the longest to reach an ICP are generally those where we are informed at the early stages of a police investigation, or employer disciplinary process. We generally await the outcome of the police or employer process before proceeding. In serious case an interim order may be sought. An example of a case that falls into this category is a serious criminal investigation into allegations of sexual assault where the police notified HPC at the time they were made aware of the potential offence. The case required full investigation by the police which can take some time. A decision on whether to prosecute is then required and a trial date listed.

7.3 If only one piece of information is required by the Case Manager and the case progresses with no issues, the minimum amount of time it would take for a case to reach an ICP is 3 months.

7.4 Summary of investigation process



5. Information received from registrant and assessed for any further investigation (stages 2 - 4 repeated if necessary)
- ↓
6. Case assigned to next available ICP date
- ↓
7. Bundle prepared 3 weeks prior to ICP date and sent to panel 2 weeks prior to ICP date
- ↓
8. Panel make decision:
- i. case to answer/no case to answer; or
 - ii. request further information and the case goes back to stage 2

Hearings Process

8.0 Preparation of the case

- 8.1 For those cases referred to a final hearing, there are a number of steps before a case can be listed. Solicitors are instructed by the Case Manager, and they will prepare the case for hearing including taking formal witness statements and acquiring expert reports where necessary. A service level agreement exists between HPC and Kingsley Napley which sets out a number of particular service level standards. We receive a monthly report and review the service level agreement every six months.
- 8.2 When Kingsley Napley receives a new case, the following steps are followed:
- the case is assigned to a solicitor;
 - a case plan is prepared and sent to the HPC Case Manager within two weeks; and
 - witness interviews are arranged, experts instructed where necessary and documentation required for the final hearing prepared.
- 8.3 In some instances further concerns may be raised by witnesses during the course of interviews which raise new allegations against the registrant. To ensure the process is fair and transparent, where new information comes to light it is not simply added to the existing case, but the registrant must be given the opportunity to respond to the new allegations. In these circumstances the case may be delayed while the additional allegations are considered by an ICP and a case to answer decision reached. The allegations can then be joined and heard together in accordance with the Joinder practice note, approved by the Council in October 2009.

9.0 Fixing the hearing

- 9.1 The HPC should be notified that the case is ready to fix within four and a half months of the ICP referral date in 80 per cent of cases. This allows for the more complex cases which may take longer to prepare. Cases are not listed for hearings immediately after an ICP for a number of reasons. It is not known at this stage how many witnesses will be required, whether any witnesses may be considered vulnerable and what additional material may need to be sought. It is also not possible to determine the number of days required for a hearing until the case has been prepared. In waiting until this information is confirmed, the Hearings Team can ensure that cases are listed appropriately and reduce delay in relisting cases.
- 9.2 Once the Hearings Team is notified that a case is ready to fix, the Scheduling Officers will obtain witness availability and that of the Registrant and representative. An average of three witnesses are required for each case, however this can be considerably more in some complex cases. It is often the case that witnesses delay confirming their availability and have to be followed up after two weeks by telephone. In some cases witnesses are assessed as vulnerable and special measures need to be provided for when fixing the hearing. This can include a video link or screens. When witness availability is confirmed, suitable dates are considered in light of the availability of resources. A panel is then organised and the hearing details confirmed to all parties. The availability of the panel (particularly the registrant member), adds further logistical detail to organising the hearing.

10.0 Preliminary hearings

- 10.1 In cases where there are complex issues to resolve before the final hearing, a preliminary hearing may be required. The Preliminary Hearings practice note sets out the process which is followed. The types of issues and applications considered at a preliminary hearing include:
- witness summons;
 - complex legal argument;
 - joinder applications;
 - vulnerable witness applications;
 - disclosure of information; and
 - location of a hearing.
- 10.2 It is often the case that dates for the final hearing cannot be listed until after a preliminary meeting has taken place. Decisions made at the meeting often influence the number of days allocated or venue for a hearing. Although a preliminary hearing can mean delay in the listing of a case, the types of issues that are resolved often mean that the final hearing itself runs more smoothly and there is less likelihood of an adjournment at a later stage.

11.0 Postponement and adjournment

- 11.1 The process by which postponements and adjournments are considered is set out in the practice note approved by the Council in October 2009. Once a date has been set for the final hearing, a Registrant can request a postponement which is considered by the Head of Adjudication if it is received 14 days or more before the hearing.
- 11.2 Postponements were requested in 42 instances between April and December 2009 and the types of issues raised were health issues, dates not suitable for representatives and more time needed to prepare. Only 13 of those requests for postponement were granted. If a request is made less than 14 days before the hearing a panel chair can consider this electronically in advance of hearing date if time allows or a panel will consider the request at the hearing. Requests have been granted in circumstances such as the submission of a medical certificate to indicate how the registrant's health condition would stop them from attending.
- 11.3 Postponements are often requested close to the time of the final hearing, rather than when hearing dates are first confirmed (which is, on average, four months before proceedings). This contributes to further delay if postponement requests are granted.
- 11.4 The estimated number of days required for a case to conclude is calculated based on the number of witnesses attending, the complexity of the allegations, whether the Registrant intends to attend and be represented and whether there are any special measures required for witnesses. In some cases hearings may be part heard if the case does not conclude in the time provided. This usually occurs when a Registrant attends with a representative without previously informing the HPC, or where significant new evidence is produced on the day of the hearing rather than in advance.
- 11.5 Standard directions are in place for the service of bundles however, there are not costs powers available to the HPC where the directions are not complied with. The Case Management and Directions practice note sets out when exchange of information should occur. The HPC serves its bundle on the Registrant 42 days in advance of the hearing and the Registrant should serve their bundle 28 days in advance. This ensures that Registrants have sufficient time to prepare their case and are fully aware of the evidence the HPC intends to rely upon.

12.0 Length of time statistics – Hearings process

- 12.1 Approximately 60 per cent of cases are referred by the Investigating Committee Panel to either the Health or Conduct and Competence Committee. So far in this financial year (April to December 2009), cases have taken a median of eleven months, mean of ten months, from the time they were referred by an ICP to conclusion at a final hearing. This is currently the same as in 2008-09. These figures include cases that were adjourned or part heard on a previous occasion, and have therefore been listed for hearing more than once.

Months from case referred by ICP to conclusion at final hearing

Number of Months	Cases 2008-9	Cases 2009-10 YTD
1-4	9	19
5-8	51	59
9-12	62	43
13-16	34	31
17-20	11	17
21-24	3	9
25-28	2	4
29-32	0	1
33-36	2	1
Over 36	1	0
Mean Months	11	11
Median Months	10	10
Total Cases	175	184

13.0 Summary of hearings process

